

**SECTION XVI: Variances**

**16.10:** Variances to the Town of Marion Sanitary Code may be granted by the Board of Health in conformity with the standards and procedures of Massachusetts Regulations 310 CMR 11.11 and 310 CMR 15.410 through 15.416 unless otherwise stipulated in these regulations. [December 6, 1988 and March 13, 1990 and November 1, 2005]

**16.10.1:** All applications to the Board of Health for variances to any provision shall be in writing. The applicant shall submit their letter for a variance that shall include the specific sub-section from which a variance is sought.

[March 13, 1990 and November 1, 2005]

**16.10.2:** No application for a variance to the Marion Sanitary Code or Title V regulation shall be granted or denied by the Board of Health until it has held a public hearing on the said application. [March 13, 1990 and November 1, 2005]

**16.10.3:** The applicant or the applicants representative shall, by certified mail, notify all property owners abutting the subject property and directly across the street from the subject property not less than ten (10) days prior to the date of the public hearing. The notice shall include a copy of the legal advertisement or all information required in the legal advertisement as noted in this section and as provided by the Board. The notification of abutters shall be at the expense of the applicant. [November 1, 2005]

**16.10.4:** The name of the applicant, the nature and the location of the variance(s) applied for, and the place, date, and time of the Board's public hearing on the variance(s) must be advertised in a locally circulated newspaper. A notice of a public hearing shall be advertised by the Town, in general circulation of a newspaper within the Town at least once in each of the two weeks prior to the week of the public hearing on said variance(s). The cost of this legal advertisement is to be paid by the applicant. The payment shall accompany the cost of the permit application, proposed plans, and variance application. Public hearings will not be scheduled until the variance submittal is complete and the Board has approved the application for advertisement. [November 1, 2005]

**16.20:** A variance may be granted upon a finding by the Marion Board of Health that due to the nature of the land subject to the application of the literal enforcement of these regulations would result in a substantial hardship, and that desirable relief may be granted without detriment to the public health, and without nullifying or substantially derogating from the intent of these regulations. [December 6, 1988]

**16.30:** In any proceeding for a variance it shall be presumed that a variance from the regulation will result in substantial detriment to the public health and it shall be the burden of the applicant by clear and credible evidence to disprove that presumption.

[December 6, 1988]

**16.40:** The Board of Health may impose such conditions upon the issuance of a variance as it deems fit to protect the public health, including, but not limited to, requiring - replication of waters or resource areas. [December 6, 1988]

**16.50:** Any application for a variance to the Marion Sanitary Code for a septic system with a leaching area that falls within the set-backs set forth in regulation MSC 4.20.4 must include a written statement from a registered geohydrologic engineer, or the equivalent of same, certifying that in his/her opinion, the effluent from the proposed septic system will not in any way contaminate the resource area, wetland, watercourse, or coastal wetland adjacent to that septic system. [December 6, 1988]

**16.50.1:** The full provisions of MSC 16.50 shall apply to the application for any variance to the Marion Sanitary Code regulation, the granting of which shall have the effect of moving the septic system leaching area outside of a resource area set-back established in either Title 5 of the Marion Sanitary Code.  
[December 6, 1988]

**16.60:** No variance may be granted for a hardship resulting from the creation of lots or boundary lines by subdivision of land. [March 13, 1990]